

## Message Text

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ACTION SCI-06

INFO OCT-01 EB-11 AF-10 ARA-16 EA-11 EUR-25 NEA-10 RSC-01

CIAE-00 COME-00 DODE-00 FMC-04 INR-10 NSAE-00 CG-00

COA-02 DLOS-06 OIC-04 NSCE-00 SSO-00 USIE-00 CCO-00

INRE-00 PM-07 H-03 L-03 NSC-10 PA-04 PRS-01 SPC-03

SS-20 ACDA-19 IO-14 CEQ-02 DOTE-00 INT-08 OMB-01

DRC-01 NSF-04 EPA-04 ISO-00 /221 W

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O R 230725Z OCT 73

FM AMEMBASSY LONDON

TO SECSTATE WASHDC IMMEDIATE 4998

INFO AMEMBASSY ACCRA

AMEMBASSY ATHENS

AMEMBASSY BERN

AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY BUENOS AIRES

AMEMBASSY CANBERRA

AMEMBASSY CARACAS

AMEMBASSY COPENHAGEN

AMEMBASSY DAR ES SALAAM

AMEMBASSY DUBLIN

AMEMBASSY HELSINKI

AMEMBASSY JAKARTA

AMCONSUL JOHANNESBURG

AMEMBASSY KUWAIT

AMEMBASSY LAGOS

AMEMBASSY LISBON

AMEMBASSY MANILA

AMEMBASSY MEXICO

AMEMBASSY MONROVIA

AMEMBASSY MONTEVIDEO

AMEMBASSY MOSCOW

AMEMBASSY NAIROBI

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AMEMBASSY NEW DELHI

AMEMBASSY OSLO  
AMEMBASSY PARIS  
AMEMBASSY ROME  
AMEMBASSY SANTIAGO  
AMEMBASSY SEOUL  
AMEMBASSY SINGAPORE  
AMEMBASSY STOCKHOLM  
AMEMBASSY TEHRAN  
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AMEMBASSY WARSAW  
AMEMBASSY WELLINGTON

C O N F I D E N T I A L SECTION 01 OF 03 LONDON 12260

STATE FOR SCI/EN MR. SALMON

E.O.11652; GDS

TAGS: IMCO, PBOR, ETRN, SENV

SUBJECT: IMCO MARINE POLLUTION CONFERENCE: LOS ISSUES

1. DELEGATION RECOMMENDS DEPT. INSTRUCT ALL INFO ADDRESSES TO MAKE IMMEDIATE APPROACHES TO HIGH-LEVEL LOS PERSONNEL ON ISSUE EXPLAINED BELOW. SINCE LOS DELEGATE IN NEW YORK HAS APPROACHED UK, FRANCE, USSR AND JAPAN, DEPT. SHOULD SPECIFY WHETHER FURTHER APPROACHES IN THESE CAPITALS DESIRABLE. WE BELIEVE THEY ARE ESSENTIAL IN USSR AND FRANCE. SINCE VOTING COULD TAKE PLACE AS EARLY AS OCTOBER 29 AND SINCE DEPT. HAS APPROVED DIPLOMATIC INITIATIVE IN PRINCIPLE, EMBASSIES MAY WISH TO MAKE APPOINTMENTS IF NECESSARY TO ENSURE EARLY ACCESS TO APPROPRIATE OFFICIALS. FOLLOWING PARAGRAPHS OUTLINE ARGUMENTS FOR EMBASSY USE WITH TWO DIFFERENT APPROACHES SPECIFIED, ONE FOR MARITIME STATES AND ONE FOR COASTAL STATES. PARAGRAPH FIVE IS FOR USE IN ALL CAPITALS. PARAGRAPH SIX IS FOR USE MAINLY IN MARITIME CAPITALS LISTED. PARAGRAPH SEVEN IS FOR USE MAINLY IN COASTAL CAPITALS LISTED. BUENOS AIRES, CANBERRA, NEW DELHI, WELLINGTON AND DUBLIN MAY WANT TO USE ARGUMENTS IN ALL THREE PARAGRAPHS: 5, 6, AND 7. THE HAGUE AND TOKYO  
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SHOULD NOT USE ARGUMENTS BUT ONLY INFORM THEM THAT WE ARE MAKING DIPLOMATIC EFFORTS AND WOULD APPRECIATE THEIR CONTINUED COOPERATION.

2. FYI BACKGROUND. SUBJECT CONFERENCE (OCT. 8 - NOV. 2) IS BASICALLY TECHNICAL AND IS ATTEMPTING TO DRAFT A CONVENTION TO LIMIT POLLUTION FROM VESSELS THROUGH ADOPTION OF INTERNATIONAL POLLUTION CONTROL STAN-

DARDS FOR VESSEL DISCHARGE AND CONSTRUCTION. HOWEVER, BECAUSE OF UPCOMING LOS CONFERENCE AND CERTAIN OTHER FACTORS, NEGOTIATION ON QUESTIONS OF THE RIGHT OF STATES TO ENFORCE STANDARDS AND TO SET HIGHER STANDARDS DOMESTICALLY HAVE BEEN DIFFICULT. AGREEMENT HAS BEEN REACHED IN COMMITTEE ON ENFORCEMENT ARTICLE INCLUDING FLAG STATE ENFORCEMENT AGAINST ITS SHIPS AND COASTAL STATE ENFORCEMENT AGAINST ALL SHIPS FOR VIOLATIONS "WITHIN ITS JURISDICTION." LATTER FORMULATION UTILIZED AS NEUTRAL ONE TO ENSURE NO PREJUDICE TO LOS CONFERENCE CONSIDERATION OF NATURE AND EXTENT OF COASTAL STATE JURISDICTION. AGREEMENT ALSO REACHED ON ARTICLE 9 WHICH STATES THAT NOTHING IN CONVENTION SHALL PREJUDICE LOS CONFERENCE OR VIEWS OF ANY STATE ON LOS ISSUES. HOWEVER, MAJOR PROBLEM HAS DEVELOPED ON ARTICLE 8 WHICH DISCUSSES RIGHTS OF INDIVIDUAL STATES TO SET MORE STRINGENT STANDARDS FOR FOREIGN VESSELS WITHIN ITS JURISDICTION AND LIMITATIONS ON THOSE RIGHTS. IN GENERAL, MARITIME STATES FAVORED LANGUAGE IN ARTICLE 8 THAT WOULD LIMIT INDIVIDUAL STATE RIGHTS TO SET STRICTER STANDARDS, PARTICULARLY REGARDING SHIP DESIGN AND CONSTRUCTION, WHILE COASTAL STATES WANTED TO RETAIN COMPLETE FREEDOM OF ACTION DOMESTICALLY. HOWEVER, DURING DEBATE, SOME MARITIME STATES (GREECE, NETHERLANDS, NORWAY, SWEDEN AND UK) PROPOSED COMPROMISE WHICH COULD LARGELY MEET THEIR OBJECTIVE AND WHICH WOULD APPEAL TO COASTAL STATE LOS INTERESTS. RESULTING LANGUAGE, WHICH PASSED COMMITTEE, FOLLOWS:

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(1) NOTHING IN THE PRESENT CONVENTION SHALL BE CONSTRUED AS DEROGATING FROM THE POWERS OF ANY CONTRACTING STATE TO TAKE MORE STRINGENT MEASURES, WHERE SPECIFIC CIRCUMSTANCES SO WARRANT, WITHIN ITS JURISDICTION, IN RESPECT OF DISCHARGE STANDARDS.

(2) A CONTRACTING STATE SHALL NOT, WITHIN ITS JURISDICTION, IN RESPECT OF SHIPS TO WHICH THE CONVENTION APPLIES OTHER THAN ITS OWN SHIPS, IMPOSE ADDITIONAL REQUIREMENTS WITH REGARD TO SHIP DESIGN AND EQUIPMENT IN RESPECT OF POLLUTION CONTROL. THE REQUIREMENTS OF THIS PARAGRAPH DO NOT APPLY TO WATERS THE PARTICULAR CHARACTERISTICS OF WHICH, IN ACCORDANCE WITH ACCEPTED SCIENTIFIC CRITERIA, RENDER THE ENVIRONMENT EXCEPTIONALLY VULNERABLE.

(3) STATES WHICH ADOPT SPECIAL MEASURES IN ACCORDANCE WITH THIS ARTICLE SHALL NOTIFY THEM TO THE ORGANIZATION WITHOUT DELAY. THE ORGANIZATION SHALL INFORM CONTRACTING STATES ABOUT THESE MEASURES.

3. US PROBLEMS WITH TEXT ARE AS FOLLOWS: ARTICLE 8(1) IMPLIES SOME LIMITATION ON US RIGHT TO IMPOSE HIGHER DISCHARGE STANDARDS, WHILE CONVERSELY IMPLYING POSSIBLY TOO LITTLE LIMITATION ON OTHER COASTAL STATES; ARTICLE CONFIDENTIAL

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8(2), FIRST SENTENCE, PREVENTS US FROM IMPOSING STRICTER CONSTRUCTION STANDARDS, EVEN IN PORTS; ARTICLE 8(2), SECOND SENTENCE, SERIOUSLY PREJUDICES US LOS POSITION BY GIVING COASTAL STATE RIGHT TO SET HIGHER CONSTRUCTION STANDARDS WITHIN THEIR JURISDICTION IN CERTAIN WATERS. ON LAST POINT, US POSITION IN LOS NEGOTIATIONS IS THAT COASTAL STATES SHOULD NOT BE AUTHORIZED TO SET HIGHER STANDARDS FOR VESSELS PASSING OFF THEIR COASTS. IF ARTICLE 8(2) IS ADOPTED, OUR LOS OPPONENTS WOULD CERTAINLY ARGUE IN LOS NEGOTIATIONS THAT ISSUE OF COASTAL STATE RIGHT TO SET HIGHER STANDARDS HAD ALREADY BEEN DECIDED AGAINST US. CONSEQUENTLY, US WORKING ACTIVELY FOR DELETION OF ARTICLE 8 FOR BOTH LOS AND DOMESTIC ENVIRONMENTAL REASONS. END FYI.

4. EMBASSY SHOULD ATTEMPT TO GET AGREEMENT FROM HOST GOVERNMENT TO VOTE AGAINST ARTICLE 8 IN PLENARY SESSION AND TO SO INSTRUCT THEIR DELEGATION. THE PLENARY SESSIONS BEGIN OCTOBER 29, AND THUS INSTRUCTIONS FROM HOST GOVERNMENT SHOULD BE SENT BY END OF THIS WEEK.

5. FOLLOWING ARGUMENTS ARE FOR USE BY ALL EMBASSIES:

(A) IT WAS WIDELY AGREED IN SEABED COMMITTEE AND HERE THAT IMCO CONFERENCE SHOULD NOT PREJUDICE LOS CONFERENCE.

(B) ACCEPTANCE OF ARTICLE 8 IN THIS CONFERENCE WILL SERIOUSLY PREJUDICE LOS CONFERENCE AND WILL MAKE NEGOTIATIONS OF THESE AND RELATED ISSUES CONSIDERABLY MORE DIFFICULT. NATURE AND EXTENT OF RIGHTS OF COASTAL STATES, AND LIMITATIONS ON THOSE RIGHTS, ARE AT VERY HEART OF LOS NEGOTIATIONS AND SHOULD BE DECIDED THERE.

(C) DECISIONS ON ANY LOS ISSUES SHOULD BE TAKEN ONLY IN CONTEXT OF GENERAL RESOLUTION OF ALL BASIC LOS QUESTIONS AT LOS CONFERENCE. ATTEMPT TO RESOLVE SINGLE BASIC ISSUE SEPARATELY COULD JEOPARDIZE STRUCTURE OF OVERALL LOS SETTLEMENT THAT MAY BE EMERGING IN LOS NEGOTIATIONS. ARTICLE 8(2) APPROACH MAY BE INCONSISTENT WITH CERTAIN ESSENTIAL PARTS OF LOS SETTLEMENT. ALSO, INDIVIDUAL COUNTRY'S VIEWPOINT MAY BE CONSIDERABLY DIFFERENT WHEN FOCUSING ON BROAD SPECTRUM OF LOS ISSUES RATHER THAN ON ONE ISOLATED ISSUE.  
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(D) IF AGREE THAT LOS ISSUES SHOULD NOT BE DEALT WITH HERE, THEN ARTICLE 8 COMPLETELY UNNECESSARY. IF ARTICLE 8 OMITTED ENTIRELY, THEN INDIVIDUAL STATE'S RIGHTS WOULD CONTINUE AS AT PRESENT UNDER INTERNATIONAL LAW AND ANY EXTENSION OR LIMITATION WOULD BE DECIDED AT LOS CONFERENCE.

6. EMBASSIES BRUSSELS, COPENHAGEN, HELSINKI, PARIS, BONN, ATHENS, TEHRAN, DUBLIN, ROME, TOKYO, MONROVIA, THE HAGUE, OSLO, WARSAW, LISBON, SINGAPORE, JOHANNESBURG, STOCKHOLM, BERNE AND MOSCOW SHOULD USE FOLLOWING ADDITIONAL ARGUMENTS:

(A) SECOND SENTENCE OF ARTICLE 8(2) ESSENTIALLY CONCEDES BASIC OBJECTIVE OF MANY COASTAL STATES TO OBTAIN RIGHT TO IMPOSE DOMESTIC VESSEL CONSTRUCTION STANDARDS ON FOREIGN VESSELS IN WATERS WHICH INDIVIDUAL COASTAL STATE DECIDES ARE EXCEPTIONALLY VULNERABLE. COASTAL STATES MIGHT TAKE SUCH ACTION IN THE TERRITORIAL SEA, STRAITS, OR EVEN ON THE HIGH SEAS. THERE WOULD BE LITTLE CHECK ON THIS RIGHT AND IT COULD LEAD TO UN-

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ACCEPTABLE STANDARDS IN LARGE OCEAN AREAS.

(B) AT BEST, SITUATION WOULD PRODUCE NUMEROUS DISPUTES BETWEEN MARITIME AND COASTAL STATES OVER INDIVIDUAL COASTAL STATE ACTIONS, DISPUTES WHICH LOS CONFERENCE IS SEEKING TO END.

(C) PROBLEMS OF INTERFERENCE WITH NAVIGATION THROUGH USE OF UNREASONABLE STANDARDS COULD EASILY ARISE, BOTH BEFORE AND AFTER LOS CONVENTION IS AGREED AND IN FORCE. IN PARTICULAR, HARASSMENT OF VESSELS COULD TAKE PLACE UNDER IMCO CONVENTION, WHICH HAS FEW PROTECTIONS FOR NAVIGATION, BEFORE LOS CONVENTION ENTERS INTO FORCE.

(D) COASTAL STATES WILL NOT REGARD ARTICLE 8 AS FINAL SETTLEMENT OF POLLUTION ISSUE BUT ONLY AS STARTING POINT FOR FURTHER CONCESSIONS AT LOS CONFERENCE. HAVING ACHIEVED ONE OBJECTIVE, THEY WILL THEN WORK TO EXPAND COASTAL STATE POLLUTION CONTROL JURISDICTION INTO PLENARY-TYPE JURISDICTION WHICH MANY OF THEM DESIRE.

(E) ANY POSSIBLE ADVANTAGE FOR MARITIME STATES IN ARTICLE 8(2), FIRST SENTENCE, WILL BE COMPLETELY NULLIFIED IN FACT BY THE SECOND SENTENCE, AND BY THE CLEAR PERMISSIVENESS OF ARTICLE 8(1). THE NUANCES OF WORDING MAY LOOK ATTRACTIVE TO SOME, BUT IN FACT, COASTAL

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STATES ARE BEING PERMITTED BROAD LATITUDE TO DO WHAT THEY PLEASE.

(F) IF STRONG CONVENTION WITHOUT ARTICLE 8 IS ADOPTED, US WILL CLOSELY CONSIDER NEED FOR UNIFORMITY BEFORE TAKING ANY DECISION REGARDING ADDITIONAL STANDARDS.

7. EMBASSIES BUENES AIRES, CANBERRA, SANTIAGO, ACCRA, NEW DELHI, JAKARTA, NAIROBI, KUWAIT, MEXICO CITY, WELLINGTON, LAGOS, MANILA, SEOUL, DAR ES SALAAM, MONTEVIDEO, AND CARACAS SHOULD USE FOLLOWING ARGUMENTS IN

ADDITION TO THOSE IN PARAGRAPH FIVE. LANGUAGE IN 8(1)  
"WHERE SPECIFIC CIRCUMSTANCES SO WARRANT," THE ENTIRE  
FIRST SENTENCE OF ARTICLE 8(2), AND THE LIMITATION IN  
THE SECOND SENTENCE OF 8(2) "PARTICULAR CHARACTERISTICS  
OF WHICH, IN ACCORDANCE WITH ACCEPTED SCIENTIFIC CRI-  
TERIA, RENDER THE ENVIRONMENT EXCEPTIONALLY VULNERABLE"  
OBVIOUSLY RESTRICT EXISTING COASTAL STATE RIGHTS UNDER  
INTERNATIONAL LAW. US HAD UNDERSTOOD THAT THIS  
CONFERENCE SHOULD NOT PREJUDICE LOS CONFERENCE BUT  
EXISTING ARTICLE 8 CERTAINLY DOES DEAL WITH LOS QUES-  
TIONS. EMBASSY SHOULD THUS INQUIRE WHETHER COASTAL  
STATE RESTRICTIONS IN ARTICLE 8 ARE ACCEPTABLE TO HOST  
GOVERNMENTS. FYI: ARTICLE 8 SEEMS CLEARLY INCONSISTENT  
WITH POSITION TAKEN IN SANTO DOMINGO DECLARATION, OAU  
DECLARATION, MALACCA STRAIT DECLARATION, ETC. WE DIS-  
AGREE WITH THOSE POSITIONS, BUT EMBASSY MAY VAGUELY  
ALLUDE TO THEM IF NECESSARY TO ACHIEVE NEGATIVE VOTE.  
END FYI.

8. FOR MOSCOW. SOVIET OPPOSITION ON THIS ISSUE HAS BEEN  
PARTICULARLY TROUBLESOME SINCE USSR EFFECTIVELY CONTROLS  
LO VOTES IN RELATIVELY SMALL CONFERENCE (USUALLY  
50-60 COUNTRIES PRESENT DURING VOTES). CONSEQUENTLY,  
IN ADDITION TO ARGUMENTS IN PARAS 5 AND 6, RECOMMEND  
USE OF FOLLOWING: SUCCESS OF LOS CONFERENCE DEPENDS ON  
ACHIEVEMENT OF WIDELY-ACCEPTED CONVENTION. TO BE WIDELY-  
ACCEPTABLE, CONVENTION MUST NOT CONTAIN SOLUTION TO ANY  
PARTICULAR PROBLEM WHICH IS UNACCEPTABLE TO LARGE GROUP  
OF STATES OR TO SMALL GROUP OF STATES WITH STRONG IN-  
TERESTS IN A CERTAIN ISSUE. THESE BROADER CONSIDERATIONS  
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DO NOT SEEM TO BE REFLECTED IN SOVIET RESPONSES TO  
OUR STRONG PLEAS ON THIS ISSUE HERE. EVEN AT SPECIAL  
GROUP OF 5 MEETING IN LONDON, OCTOBER 22, SOVDEL WAS  
NON-COMMITTAL AFTER STRONG APPEALS FROM US AND JAPAN.  
IT WOULD BE EXTREMELY HARMFUL TO MUTUAL INTEREST IN  
SUCCESSFUL LOS CONFERENCE TO SET PRECEDENT HERE OF  
ISOLATING SMALL GROUP OF STATES ON ISSUE OF GREAT IM-  
PORTANCE TO THEM.

9. REQUEST EMBASSIES REPORT ANY RESULTS TO EMBASSY  
LONDON FOR IMCO DEL ASAP TO ALLOW COORDINATED APPROACHES  
HERE.  
ANNENBERG

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## Message Attributes

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**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 23 OCT 1973  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** garlanwa  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
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**Disposition Remarks:**  
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**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** GS ANNENBERG  
**Errors:** N/A  
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**Office:** ACTION SCI  
**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 9  
**Previous Channel Indicators:**  
**Previous Classification:** CONFIDENTIAL  
**Previous Handling Restrictions:** n/a  
**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** garlanwa  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 26 JUL 2001  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <26-Jul-2001 by thigpegh>; APPROVED <19-Nov-2001 by garlanwa>  
**Review Markings:**

Declassified/Released  
US Department of State  
EO Systematic Review  
30 JUN 2005

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** IMCO MARINE POLLUTION CONFERENCE: LOS ISSUES  
**TAGS:** PBOR, ETRN, SENV, IMCO  
**To:** STATE  
**Type:** TE  
**Markings:** Declassified/Released US Department of State EO Systematic Review 30 JUN 2005